
BILL REQUEST - CODE REVISER'S OFFICE

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ATTY/TYPIST: KB:rmh

BRIEF DESCRIPTION:

2

3 **ESSB 5606** - H COMM AMD

4 By Committee on Children & Family Services

5

ADOPTED AS AMENDED 4/11/01

6 Strike everything after the enacting clause and insert the
7 following:

8 "NEW SECTION. **Sec. 1.** It is the intent of the legislature to
9 authorize the department of social and health services to investigate
10 the background of current and future department employees to the same
11 extent and with the same effect as it has authorized the state to
12 investigate the background and exclude from the provision of service
13 current and future care providers, contractors, volunteers, and others.
14 The department of social and health services must coordinate with the
15 department of personnel to develop rules that address the procedures
16 for undertaking background checks, and specifically what action would
17 be taken against a current employee who is disqualified from his or her
18 current position because of a background check not previously
19 performed.

20 **Sec. 2.** RCW 9.96A.020 and 1999 c 16 s 1 are each amended to read
21 as follows:

22 (1) Subject to the exceptions in subsections (3) and (4) of this
23 section, and unless there is another provision of law to the contrary,
24 a person is not disqualified from employment by the state of Washington
25 or any of its counties, cities, towns, municipal corporations, or
26 quasi-municipal corporations, nor is a person disqualified to practice,
27 pursue or engage in any occupation, trade, vocation, or business for
28 which a license, permit, certificate or registration is required to be
29 issued by the state of Washington or any of its counties, cities,
30 towns, municipal corporations, or quasi-municipal corporations solely
31 because of a prior conviction of a felony. However, this section does
32 not preclude the fact of any prior conviction of a crime from being
33 considered.

34 (2) A person may be denied employment by the state of Washington or
35 any of its counties, cities, towns, municipal corporations, or quasi-
36 municipal corporations, or a person may be denied a license, permit,

1 certificate or registration to pursue, practice or engage in an
2 occupation, trade, vocation, or business by reason of the prior
3 conviction of a felony if the felony for which he or she was convicted
4 directly relates to the position of employment sought or to the
5 specific occupation, trade, vocation, or business for which the
6 license, permit, certificate or registration is sought, and the time
7 elapsed since the conviction is less than ten years. However, for
8 positions in the county treasurer's office, a person may be
9 disqualified from employment because of a prior guilty plea or
10 conviction of a felony involving embezzlement or theft, even if the
11 time elapsed since the guilty plea or conviction is ten years or more.

12 (3) A person is disqualified for any certificate required or
13 authorized under chapters 28A.405 or 28A.410 RCW, because of a prior
14 guilty plea or the conviction of a felony involving sexual exploitation
15 of a child under chapter 9.68A RCW, sexual offenses under chapter 9A.44
16 RCW where a minor is the victim, promoting prostitution of a minor
17 under chapter 9A.88 RCW, or a violation of similar laws of another
18 jurisdiction, even if the time elapsed since the guilty plea or
19 conviction is ten years or more.

20 (4) A person is disqualified from employment by school districts,
21 educational service districts, and their contractors hiring employees
22 who will have regularly scheduled unsupervised access to children,
23 because of a prior guilty plea or conviction of a felony involving
24 sexual exploitation of a child under chapter 9.68A RCW, sexual offenses
25 under chapter 9A.44 RCW where a minor is the victim, promoting
26 prostitution of a minor under chapter 9A.88 RCW, or a violation of
27 similar laws of another jurisdiction, even if the time elapsed since
28 the guilty plea or conviction is ten years or more.

29 (5) A person is disqualified from employment by the department of
30 social and health services because of a prior felony guilty plea or
31 conviction if the felony relates to the position of employment sought
32 and the position involves or may involve unsupervised access to
33 children, a person who is under the age of twenty-one and has been
34 sentenced to a term of confinement under the supervision of the
35 department of social and health services under chapter 13.40 RCW, a
36 person who is a vulnerable adult under chapter 74.34 RCW or a person
37 who is a vulnerable person, even if the time elapsed since the guilty
38 plea or conviction is ten years or more. For the purposes of this

1 section, "vulnerable person" means an adult of any age who lacks the
2 functional, mental, or physical ability to care for himself or herself.

3 (6) Subsections (3) and (4) of this section only apply to a person
4 applying for a certificate or for employment on or after July 25, 1993.

5 **Sec. 3.** RCW 28A.400.303 and 1992 c 159 s 2 are each amended to
6 read as follows:

7 School districts, educational service districts, the state school
8 for the deaf, the state school for the blind, and their contractors
9 hiring employees who will have regularly scheduled unsupervised access
10 to children shall require a record check through the Washington state
11 patrol criminal identification system under RCW 43.43.830 through
12 43.43.834, 10.97.030, and 10.97.050 and through the federal bureau of
13 investigation before hiring an employee. The record check shall
14 include a fingerprint check using a complete Washington state criminal
15 identification fingerprint card. The requesting entity shall provide
16 a copy of the record report to the applicant. When necessary,
17 applicants may be employed on a conditional basis pending completion of
18 the investigation. If the applicant has had a record check within the
19 previous two years, the district, the state school for the deaf, the
20 state school for the blind, or contractor may waive the requirement.
21 The district, pursuant to chapter 41.59 or 41.56 RCW, the state school
22 for the deaf, the state school for the blind, or contractor hiring the
23 employee shall determine who shall pay costs associated with the record
24 check.

25 **Sec. 4.** RCW 28A.400.305 and 1996 c 126 s 5 are each amended to
26 read as follows:

27 The superintendent of public instruction shall adopt rules as
28 necessary under chapter 34.05 RCW on record check information. The
29 rules shall include, but not be limited to the following:

30 (1) Written procedures providing a school district, state school
31 for the deaf, or state school for the blind employee or applicant for
32 certification or employment access to and review of information
33 obtained based on the record check required under RCW 28A.400.303 (~~and~~
34 ~~28A.400.304~~); and

35 (2) Written procedures limiting access to the superintendent of
36 public instruction record check data base to only those individuals
37 processing record check information at the office of the superintendent

1 of public instruction, the appropriate school district or districts,
2 the state school for the deaf, the state school for the blind, and the
3 appropriate educational service district or districts.

4 **Sec. 5.** RCW 43.20A.710 and 2000 c 87 s 2 are each amended to read
5 as follows:

6 (1) The secretary shall investigate the conviction records, pending
7 charges ~~((or))~~ and disciplinary board final decisions of:

8 (a) ~~((Persons being considered for state employment in positions~~
9 ~~directly responsible for the supervision, care, or treatment of))~~ Any
10 current employee or applicant seeking or being considered for any
11 position with the department who will or may have unsupervised access
12 to children, vulnerable adults, or individuals with mental illness or
13 developmental disabilities~~((+~~

14 ~~(b) Persons being considered for state employment in positions~~
15 ~~involving unsupervised access to vulnerable adults to conduct)).~~ This
16 includes, but is not limited to, positions conducting comprehensive
17 assessments, financial eligibility determinations, licensing and
18 certification activities, investigations, surveys, or case management;
19 or for state positions otherwise required by federal law to meet
20 employment standards;

21 ~~((+e)))~~ (b) Individual providers who are paid by the state and
22 providers who are paid by home care agencies to provide in-home
23 services involving unsupervised access to persons with physical,
24 mental, or developmental disabilities or mental illness, or to
25 vulnerable adults as defined in chapter 74.34 RCW, including but not
26 limited to services provided under chapter 74.39 or 74.39A RCW; and

27 ~~((+d)))~~ (c) Individuals or businesses or organizations for the
28 care, supervision, case management, or treatment of children,
29 developmentally disabled persons, or vulnerable adults, including but
30 not limited to services contracted for under chapter 18.20, 18.48,
31 70.127, 70.128, 72.36, or 74.39A RCW or Title 71A RCW.

32 (2) The investigation may include an examination of state and
33 national criminal identification data. The secretary shall use the
34 information solely for the purpose of determining the character,
35 suitability, and competence of these applicants.

36 (3) An individual provider or home care agency provider who has
37 resided in the state less than three years before applying for
38 employment involving unsupervised access to a vulnerable adult as

1 defined in chapter 74.34 RCW must be fingerprinted for the purpose of
2 investigating conviction records both through the Washington state
3 patrol and the federal bureau of investigation. This subsection
4 applies only with respect to the provision of in-home services funded
5 by medicaid personal care under RCW 74.09.520, community options
6 program entry system waiver services under RCW 74.39A.030, or chore
7 services under RCW 74.39A.110. However, this subsection does not
8 supersede RCW 74.15.030(2)(b).

9 (4) An individual provider or home care agency provider hired to
10 provide in-home care for and having unsupervised access to a vulnerable
11 adult as defined in chapter 74.34 RCW must have no conviction for a
12 disqualifying crime under RCW 43.43.830 and 43.43.842. An individual
13 or home care agency provider must also have no conviction for a crime
14 relating to drugs as defined in RCW 43.43.830. This subsection applies
15 only with respect to the provision of in-home services funded by
16 medicaid personal care under RCW 74.09.520, community options program
17 entry system waiver services under RCW 74.39A.030, or chore services
18 under RCW 74.39A.110.

19 (5) The secretary shall provide the results of the background check
20 on individual providers to the persons hiring them or to their legal
21 guardians, if any, for their determination of the character,
22 suitability, and competence of the applicants. If the person elects to
23 hire or retain an individual provider after receiving notice from the
24 department that the applicant has a conviction for an offense that
25 would disqualify the applicant from having unsupervised access to
26 persons with physical, mental, or developmental disabilities or mental
27 illness, or to vulnerable adults as defined in chapter 74.34 RCW, then
28 the secretary shall deny payment for any subsequent services rendered
29 by the disqualified individual provider.

30 (6) Criminal justice agencies shall provide the secretary such
31 information as they may have and that the secretary may require for
32 such purpose.

33 NEW SECTION. **Sec. 6.** A new section is added to chapter 41.06 RCW
34 to read as follows:

35 (1) The board shall amend any existing rules established under RCW
36 41.06.475 and adopt rules developed in cooperation and agreement with
37 the department of social and health services to implement the
38 provisions of this act.

1 (2) The legislature's delegation of authority to the agency under
2 this act is strictly limited to:

3 (a) The minimum delegation necessary to administer the act's clear
4 and unambiguous directives; and

5 (b) The administration of circumstances and behaviors foreseeable
6 at the time of enactment.

7 NEW SECTION. **Sec. 7.** A new section is added to chapter 41.06 RCW
8 to read as follows:

9 The personnel resources board must develop policy recommendations
10 addressing the action that will be taken if a background check result
11 disqualifies an employee from his or her current position. A report of
12 the recommendations developed must be delivered to the legislature by
13 December 1, 2001.

14 NEW SECTION. **Sec. 8.** This act is necessary for the immediate
15 preservation of the public peace, health, or safety, or support of the
16 state government and its existing public institutions, and takes effect
17 immediately."

18 Correct the title.

EFFECT: Exempts the Department of Social and Health Services from the 10-year limit on past convictions when considering persons for employment in positions that have or may have unsupervised access to a vulnerable population. Amends the statutes relating to background checks of school employees to include the State School for the Blind and the State School for the Deaf. Requires the Department of Social and Health Services to perform criminal history checks on current employees and applicants that will or may have unsupervised access to a vulnerable population. The checks on current employees will not occur until 1 year after the effective date of the act; in the interim, the Personnel Resources Board must develop a policy for current employees who are disqualified by their criminal history. Rule-making authority is granted. An emergency clause is inserted.

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